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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,358	08/21/2003	Ernest W. Moody	MOODY 40	7475
24258 7590 02/13/2007 JOHN EDWARD ROETHEL 2290 S. JONES BLVD. #100 LAS VEGAS, NV 89146			EXAMINER EPSHTEYN, ALEXANDER	
			ART UNIT	PAPER NUMBER
			3714	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/13/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/645,358

Applicant(s)

MOODY, ERNEST W.

Examiner

Alex Epshteyn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The objection to the title of the specification in the office action dated 5/26/2006 is withdrawn.

Drawings

The objection to the drawings in the office action dated 5/26/2006 is withdrawn.

Claim Rejections - 35 USC § 112

The objection of claim 1 under USC 112 in the office action dated 5/26/2006 is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slomiany et al. (US Patent 6,612,927).

In regards to claim 1, Slomiany teaches of a method of playing a card game comprising making a first wager to play a draw poker game by a player (2: 12-15), displaying an initial draw poker hand to the player and determining a poker hand ranking of the final draw poker hand and awarding the player an amount for a winning draw poker hand based on the poker hand ranking according to a draw poker pay table (4: 54-61). Slomiany teaches that a second stage of poker can be achieved if the hand of cards provides a winning or advancement condition based on the card arrangements (4: 39-48). Slomiany states that the second stage can be independent of the first stage and does not necessarily involve achieving a "winning" hand but can also depend on other card conditions. One such condition involves a drawing of a special card (2: 1-3). Thus, if the initial poker hand comprises an arrangement of cards including such a special card, a second round of play is awarded. Further, the draw poker game can conclude with the player keeping all of the initial hand of cards and in this case the initial hand of cards would be directly responsible for the advancement to the next stage.

While, Slomiany does not explicitly teach of a second stage of the poker game being a multiple hand poker game, it is noted that Slomiany teaches that it is common in the art that a game of poker can be played with multiple hands (1: 46-53). This is further evidenced by Applicants own admission that a multiple hand poker game is commonly known in the art. Slomiany goes on to teach that the second stage of a multiple stage poker game need not be the same poker game as the original stage and can be any variation of poker games on different stages (28: 45-49). It would be obvious to one skilled in the art to use a variation of poker with multiple poker hands in a

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further stage as taught by Slomiany since Slomiany teaches that any variation of poker can be used in any additional level and multiple hand poker is a common version of poker known to one skilled in the art.

In regards to claim 2, Slomiany teaches of making an additional wager to play the next round of play (2: 13-16).

In regards to claim 3, it is clearly seen in Figs 15, 16, and 18-26 that each stage of the card game as taught by Slomiany includes five cards.

In regards to claim 4, Slomiany teaches that each additional round of play is a draw poker game and each hand has identical cards by suit and rank (28: 42-48).

In regards to claim 5 and 6, Slomiany teaches that during the game of draw poker, a player can select which cards to hold or which cards to discard. Thus, Slomiany teaches that during the additional round of play, the same cards could be held or different cards may be held in each hand (4: 39-43).

In regards to claim 7, Slomiany teaches of a method to play a card game wherein if a player receives a predetermined arrangement of cards in an initial starting hand of an additional round of play, the player is awarded another additional round of play (2: 4-7). Slomiany teaches that a second stage of poker can be achieved if the hand of cards provides a winning or advancement condition based on the card arrangements (4: 39-48). Slomiany states that the second stage can be independent of the first stage and does not necessarily involve achieving a "winning" hand but can also depend on other card conditions. One such condition involves a drawing of a special card (2: 1-3). Thus, if the initial poker hand comprises an arrangement of cards

including such a special card, a second round of play is awarded. Further, the draw poker game can conclude with the player keeping all of the initial hand of cards and in this case the initial hand of cards would be directly responsible for the advancement to the next stage.

Response to Arguments

Applicant's arguments filed 11/27/2006 have been fully considered but they are not persuasive.

With regards to the contention that the advancement to the second round is not based on the initial hand in Slomiany, the Examiner disagrees. It is described above how Slomiany teaches that the advancement to the next round is not necessarily based on a winning hand and embodiments of Slomiany that include advancing to the next round based on the initial deal of cards including a special card in the initial arrangement of cards and also the use of all the initial cards in the draw poker game.

With regards to the contention that Slomiany does not teach that each second round of play must be at least two hands of card, the Examiner disagrees. Slomiany does not have to teach that each second round *must* have at least two hands of cards but must simply teach that each second round *can* have at least two hands of cards to meet the claim language. Slomiany does explicitly teach that each second round of play of the game can involve a different variation of the game of poker as discussed above and specifically mentions the game of multi-hand poker as a popular version of the game of poker. Further, the Applicant admits that multiple hand poker is well known in the art. Thus, since Slomiany fully discloses using other versions of the game of

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poker in a second stage game and Slomiany and Applicant both disclose that multiple hand poker is well known, using multiple hand poker in a second stage of the game of Slomiany is fully anticipated by Slomiany.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Epshteyn whose telephone number is 571-272-5561. The examiner can normally be reached on M-F 8 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AE

Handwritten signature of Robert Olszewski, dated 2/12/07.

ROBERT OLSZEWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700